

**WAGANAKISING ODAWAK STATUTE
CONTRACTING STATUTE**

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SECTION I. SHORT TITLE

This Statute shall be entitled “Contract” Statute. This statute rescinds and replaces any and all previous Statutes, Resolution, Regulations and/or policies related to this subject matter. This Statute repeals and replaces Waganakising Odawak Statute (WOS) 2013-007 and WOS 2002-04, Section III. C. Contractors and Subcontractors.

SECTION II. PURPOSE

To authorize the Tribe and its sub-entities to negotiate, execute and enforce contracts within the parameters stated in this Statute and provide for legal and financial review authority.

SECTION III. DEFINITIONS

- A.** “Competitive Contracts” means contracts for which one or more vendors compete by placing bids.
- B.** “Enjinaaknegeng” means the LTBB Legal Department.
- C.** “Financial Review Authority” means a designated person within each Tribal branch or its sub-entity that has the authority to review finances.
- D.** “Frivolous law suit” means a suit without any legal merit.
- E.** “Non-Competitive Contracts” means contracts that do not require public notice or bids.
- F.** “Official” means any person holding an elective or appointed office in any branch, entity, enterprise, authority, division, department, office, commission, council, board, bureau, ccommittee, legislative body, agency and any establishment within the Executive, Legislative or

1 Judiciary branch of the Tribe including Members of the Election Board and Prosecutors.

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3 **G.** “Preponderance of the Evidence” means just enough evidence to make it more likely
4 than not that the fact the claimant seeks to prove is true.
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7 **SECTION IV. LEGAL and FINANCIAL REVIEW**

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9 **A.** To ensure that all contracts follow Tribal law and are in the best interest of the Tribe, all
10 contracts entered into on behalf of Little Traverse Bay Bands of Odawa Indians (LTBB) or
11 Odawa Casino Resort (OCR) or other LTBB Tribal entities must be reviewed by Enjinaaknegeng
12 and the Financial Review Authority before they are executed and/or take effect.
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14 **1.** Enjinaaknegeng shall review contracts for legal form, including, but not limited
15 to, appropriate designation of parties, legal consideration (i.e., mutual obligations),
16 jurisdiction, waiver of sovereign immunity, term and liability.
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18 **2.** Each branch of the government or its sub-entity shall notify the Department of
19 Commerce of the person identify as a “Financial Review Authority” and shall update the
20 information as needed. A financial review will be conducted to ensure that all contracts
21 are allowable under the program, budget and/or adequate finances are available to cover
22 the contract.
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25 **SECTION V. WAIVER OF SOVERIEGN IMMUNITY**

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27 **A.** Any contract containing a provision for a waiver of sovereign immunity shall be
28 approved by Tribal Council before they are executed and/or take effect unless otherwise
29 authorized by Statute or Resolution.
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31 **B.** The Tribal Council clearly and expressly waives its sovereign immunity to the Limited
32 Remedies as set forth in this Statute for any official that violates this Statute.
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35 **SECTION VI. CENTRAL REPOSITORY FOR CONTRACTS**

1 In order to maintain a central repository for contracts, a copy of all final, executed
2 contracts entered into on behalf of LTBB or OCR or other LTBB Tribal entities shall be sent to
3 Enjinaaknegeng for placement in a contracts repository. The repository may be kept
4 electronically as long as backups are maintained.
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7 **SECTION VII. ETHICAL RESPONSIBILITIES OF LTBB CONTRACTING**
8 **PARTIES**

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10 **A. Standards of Conduct for Officials as Contracting Parties.** All LTBB officials shall
11 abide by Little Traverse Bay Bands of Odawa Indians *Constitutionally Mandated Rules of Conduct*
12 *for Officials of Tribal Government* when involved in contracting activities.
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14 **B. Standards of Conduct for Employees as Contracting Parties.** Employees shall
15 disclose any potential conflict of interest when involved in contracting activities and shall abide
16 all terms of the Employee handbook related to ethical considerations involving contracting
17 activities.
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20 **SECTION VIII. TRIBAL CITIZENS PREFERENCE**

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22 **A. Non-Competitive Contracts and Competitive Contracts.** Contracting Parties must give
23 a preference to LTBB Tribal Citizens and LTBB Tribal Citizen owned businesses in issuing
24 noncompetitive and competitive contracts. Tribal Citizen owned businesses means a business
25 owned by at least 51% by the LTBB Tribal Citizen.
26

27 **B. LTBB Tribal Citizen Contractors/Vendors** shall be given preference with respect to request
28 for proposals and quotes only. A list of qualified LTBB Tribal Citizen Contractors/Vendors shall
29 be maintained and updated semi-annually by the LTBB Executive or designee and shall be
30 presented to Tribal Council for approval. This list may be subject to review by Enjinaaknegeng at
31 any time.
32

33 **C. LTBB Tribal Citizen Contractors/Vendors:**
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1 **1.** Shall hold similar qualifications as all other Contractors/Vendors in their product,
2 service or specialty area.

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4 **2.** Shall maintain quality of product, service or specialty area which is consistent with
5 standards for their particular industry. If quality standards are not maintained, the contract
6 may be revoked.

7
8 **3.** Shall maintain timeliness of delivery and/or service which is consistent with
9 standards for their particular industry. If timeliness standards are not maintained, the
10 contract may be revoked.

11
12 **4.** Shall be required to hold required licensure, provide performance bonds, etc. as
13 required and/or stipulated in the request for proposal.

14
15 **D.** The Contracting Party shall not be bound by pricing with respect to Tribal Preference. For
16 example, the LTBB Contractor/Vendor shall not receive a premium over others bidders due to
17 Tribal Citizenry. In addition, a Tribal Citizen Contractor/Vendor that provides the lowest quote,
18 yet does not meet the qualifications as noted above, may not be awarded the contract.

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21 **SECTION IX. AUTHORIZING SIGNATURES**

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23 **A.** As a general rule, only the persons with direct authority may sign a contract that binds the
24 Tribe. An employee who enters into a contract that binds the Tribe or its sub-entities without
25 authority may be subject to disciplinary actions, including termination. An Official who enters into
26 a contract that binds the Tribe or its sub-entities without authority may be held personally liable.

27
28 **B.** The Accounting Office will not issue and/or sign a check for goods and services obtained
29 in violation of this policy without a written justification substantiating why the contract was not
30 presented in a timely fashion or was signed by an unauthorized person.

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33 **SECTION X. LIMITED REMEDIES BEFORE THE TRIBAL COURT FOR**
34 **VIOLATIONS**

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1 **A.** An Official who enters into a contract that binds the Tribe or its sub-entities without
2 authority may be personally sued for the incurred liability. Any claim of violation against an
3 Official must be filed with the Tribal Court either during the duration of the contract or within
4 ninety (90) days after the end of the term of the contract.

5
6 **B.** In any action filed under this Statute, the Tribal Court may grant the following
7 remedies:

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9 **1.** *Equitable Remedies.* If the Tribal Court determines that the preponderance
10 of the evidence indicates that a violation occurred, its judgment must specify an
11 appropriate equitable remedy or remedies for that violation.

12
13 **2.** *Damages.*

14
15 **a.** The standard for determining whether a violation of this statute has
16 occurred for the purpose of imposing damages is “preponderance of the
17 evidence.”

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19 **b.** If the Tribal Court finds a violation of this statute occurred with
20 negligence, gross negligence, reckless indifference or malice, the Tribal Court
21 may additionally award compensatory, punitive damages and/or fines.

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23 **3.** The Tribal Court may award reasonable attorney fees and costs at its
24 discretion to the prevailing.

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26 **4.** If the Tribal Court finds that the non-prevailing party’s claims were
27 frivolous, the Court should fine the party and may order any other remedies as the
28 Tribal Court deems appropriate.

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31 **SECTION XI. SAVINGS CLAUSE**

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33 In the event that any phrase, provision, part, paragraph, subsection or section of
34 this statute is found by a court of competent jurisdiction to violate the Constitution of the Little
35 Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or

1 section shall be considered to stand alone and to be deleted, the entirety of the balance of the
2 statute remain in full and binding force and effect.

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SECTION XII. EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval
whichever comes first, or, if the Executive vetoes the legislation, then upon Tribal Council
override of the veto.

SECTION XIII. OTHER RELATED STATUTES

See Waganakising Odawak Statute (WOS) 2014-011 Contracts Statute, or as may be amended.

CERTIFICATION

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As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on XXXX, 2018 at which a quorum was present, by a vote of ___ in favor, ___ opposed, ___ abstentions, and ___ absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Frank Bernard	_____	_____	_____	_____
David Harrington	_____	_____	_____	_____
Dexter McNamara	_____	_____	_____	_____
Emily Proctor	_____	_____	_____	_____
Julie Shananaquet	_____	_____	_____	_____
Shanna Wemigwase	_____	_____	_____	_____
Marcella Reyes	_____	_____	_____	_____
Tamara Kiogima	_____	_____	_____	_____
Fred Harrington, Jr.	_____	_____	_____	_____

Date: _____
Fred Harrington, Jr., Legislative Leader

Date: _____
Tamara Kiogima, Tribal Council Secretary

Received by the Executive Office on _____ by _____

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: _____
Regina Gasco Bentley, Tribal Chairperson

Received from the Executive on _____ by _____